

1 S.37

2 Introduced by Senators Lyons, Hardy, Clarkson, Ram Hinsdale, Baruth, Bray,
3 Campion, Chittenden, Cummings, Gulick, Harrison, Hashim,
4 Kitchel, McCormack, Perchlik, Sears, Vyhovsky, Watson,
5 White and Wrenner

6 Referred to Committee on Health and Welfare

7 Date: January 25, 2023

8 Subject: Health care; Office of Professional Regulation; Board of Medical
9 Practice; reproductive health care services; gender-affirming health
10 care services; medical malpractice insurance; health insurance;
11 professional regulation; health care providers; pregnancy centers;
12 emergency contraception; protected health information

13 Statement of purpose of bill as introduced: This bill proposes to prohibit a
14 medical malpractice insurer from adjusting a health care provider's risk
15 classification or premium charges in certain circumstances and require that a
16 health insurance plan covers gender-affirming health care services and
17 abortion-related services. This bill would also prohibit a health care provider
18 from being subject to professional disciplinary action for providing or assisting
19 in the provision of legally protected health care services and would establish a
20 new unfair and deceptive act regarding pregnancy centers. This bill would
21 require the Department of Health to submit a report regarding access to

1 abortion or birth care or gender-affirming health care services and require the
2 Board of Medical Practice, in consultation with the Office of Professional
3 Regulation, to submit a report regarding the State’s participation in interstate
4 compacts and the provisions of the act. This bill would establish a new
5 subchapter in Title 26 regarding the dispensing of emergency contraception
6 and require Vermont’s public institutions of higher education to adopt gender-
7 affirming health care and medication abortion readiness plans for their
8 students. This bill would also limit the circumstances under which covered
9 entities may disclose information regarding legally protected health care
10 activity.

11 An act relating to access to legally protected health care activity and
12 regulation of health care providers

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 ~~*** Definitions ***~~

15 Sec. 1. 1 V.S.A. § 150 is added to read:

16 § 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

17 (a) “Gender-affirming health care services” means all supplies, care, and
18 services of a medical, behavioral health, mental health, surgical, psychiatric,
19 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature

1 ~~relating to the treatment of gender dysphoria. “Gender affirming health care~~
2 ~~services” does not include conversion therapy as defined by 18 V.S.A. § 8351.~~

3 ~~(b)(1) “Legally protected health care activity” means:~~

4 ~~(A) the exercise and enjoyment, or attempted exercise and~~
5 ~~enjoyment, by any person of rights to reproductive health care services or~~
6 ~~gender-affirming health care services secured by this State or the provision of~~
7 ~~insurance coverage for such services; or~~

8 ~~(B) any act or omission undertaken to aid or encourage, or attempt to~~
9 ~~aid or encourage, any person in the exercise and enjoyment, or attempted~~
10 ~~exercise and enjoyment, of rights to reproductive health care services or~~
11 ~~gender-affirming health care services secured by this State or to provide~~
12 ~~insurance coverage for such services, provided that the provision of such a~~
13 ~~health care service by a person duly licensed under the laws of this State and~~
14 ~~physically present in this State and the provision of insurance coverage for~~
15 ~~such services shall be legally protected if the service is permitted under the~~
16 ~~laws of this State, regardless of the patient’s location.~~

17 ~~(2) “Legally protected health care activity” does not include any service~~
18 ~~rendered below an applicable professional standard of care or that would~~
19 ~~violate antidiscrimination laws of this State.~~

20 ~~(c) “Reproductive health care services” means all supplies, care, and~~
21 ~~services of a medical, behavioral health, mental health, surgical, psychiatric,~~

1 ~~therapeutic, diagnostic, preventative, rehabilitative, or supportive nature~~
2 relating to pregnancy, contraception, assisted reproduction, pregnancy loss
3 management, or the termination of a pregnancy.

4 * * * Medical Malpractice * * *

5 Sec. 2. 8 V.S.A. chapter 129 is amended to read:

6 CHAPTER 129. INSURANCE TRADE PRACTICES

7 * * *

8 § 4722. DEFINITIONS

9 * * *

10 (4)(A) “Abusive litigation” means litigation or other legal action to
11 deter, prevent, sanction, or punish any person engaging in legally protected
12 health care activity by:

13 (i) filing or prosecuting any action in any other state where
14 liability, in whole or part, directly or indirectly, is based on legally protected
15 health care activity that occurred in this State, including any action in which
16 liability is based on any theory of vicarious, joint, or several liability derived
17 therefrom; or

18 (ii) attempting to enforce any order or judgment issued in
19 connection with any such action by any party to the action or any person
20 acting on behalf of a party to the action.

1 (B) ~~A lawsuit shall be considered to be based on conduct that~~
2 occurred in this State if any part of any act or omission involved in the course
3 of conduct that forms the basis for liability in the lawsuit occurs or is initiated
4 in this State, whether or not such act or omission is alleged or included in any
5 pleading or other filing in the lawsuit.

6 (5) “Legally protected health care activity” has the same meaning as in
7 1 V.S.A. § 150.

8 * * *

9 § 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR
10 DECEPTIVE ACTS OR PRACTICES DEFINED

11 The following are hereby defined as unfair methods of competition or
12 unfair or deceptive acts or practices in the business of insurance:

13 * * *

14 (7) Unfair discrimination; arbitrary underwriting action.

15 (A) Making or permitting any unfair discrimination between insureds
16 of the same class and equal risk in the rates charged for any contract of
17 insurance, or in the dividends or other benefits payable thereon, or in any other
18 of the terms and conditions of such contracts.

19

1 ~~(E) Discriminating against a health care provider, as defined by~~
2 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider's
3 risk classification or premium charges on the basis that:

4 (i) the health care provider provides or assists in the provision of
5 legally protected health care activity in this State that is unlawful in another
6 state;

7 (ii) another state's laws create potential or actual liability for that
8 activity; or

9 (iii) abusive litigation against a provider concerning legally
10 protected health care activity resulted in a judgement against the provider.

11 * * *

12 * * * Insurance Coverage * * *

13 Sec. 3. 8 V.S.A. § 4088m is added to read:

14 § 4088m. COVERAGE FOR GENDER-AFFIRMING HEALTH CARE

15 SERVICES

16 (a) Definitions. As used in this section:

17 (1) "Gender-affirming health care services" has the same meaning as in
18 1 V.S.A. § 150.

19 (2) "Health insurance plan" means Medicaid and any other public health
20 care assistance program, any individual or group health insurance policy, any
21 hospital or medical service corporation or health maintenance organization

1 ~~subscriber contract, or any other health benefit plan offered, issued, or~~
2 renewed for any person in this State by a health insurer as defined by 18
3 V.S.A. § 9402. For purposes of this section, health insurance plan shall
4 include any health benefit plan offered or administered by the State or any
5 subdivision or instrumentality of the State. The term shall not include benefit
6 plans providing coverage for a specific disease or other limited benefit
7 coverage, except that it shall include any accident and sickness health plan.

8 (b) Coverage. A health insurance plan shall provide coverage for gender-
9 affirming health care services.

10 (c) Cost sharing. The coverage required by this section shall not be subject
11 to any co-payment, deductible, coinsurance, or other cost-sharing requirement
12 or additional charge.

13 Sec. 4. 8 V.S.A. § 4099e is added to read:

14 § 4099e. COVERAGE FOR ABORTION AND ABORTION-RELATED
15 SERVICES

16 (a) Definitions. As used in this section:

17 (1) “Abortion” means any medical treatment intended to induce the
18 termination of, or to terminate, a clinically diagnosable pregnancy except for
19 the purpose of producing a live birth.

20 (2) “Health insurance plan” means Medicaid and any other public health
21 care assistance program, any individual or group health insurance policy, any

1 ~~hospital or medical service corporation or health maintenance organization~~
2 subscriber contract, or any other health benefit plan offered, issued, or
3 renewed for any person in this State by a health insurer as defined by 18
4 V.S.A. § 9402. For purposes of this section, health insurance plan shall
5 include any health benefit plan offered or administered by the State or any
6 subdivision or instrumentality of the State. The term shall not include benefit
7 plans providing coverage for a specific disease or other limited benefit
8 coverage, except that it shall include any accident and sickness health plan.

9 (b) Coverage. A health insurance plan shall provide coverage for abortion
10 and abortion-related care.

11 (c) Cost sharing. The coverage required by this section shall not be subject
12 to any co-payment, deductible, coinsurance, or other cost-sharing requirement
13 or additional charge.

14 Sec. 5. STATE PLAN AMENDMENT

15 The Agency of Human Services shall seek a state plan amendment from the
16 Centers for Medicare and Medicaid Services or federal authorities if needed to
17 allow Vermont's Medicaid program to provide coverage consistent with this
18 act.

19 * * * Professional Regulation * * *

20 Sec. 6. 3 V.S.A. § 129a is amended to read:

21 § 129a. UNPROFESSIONAL CONDUCT

1 * * *

2 (f)(1) Health care providers. Notwithstanding subsection (e) of this section
3 or any other law to the contrary, no health care provider shall be subject to
4 professional disciplinary action by a board or the Director solely for providing
5 or assisting in the provision of legally protected health care activity.

6 (2) A board or the Director shall not take adverse action on an
7 application for certification, registration, or licensure of a qualified health care
8 provider based on a criminal or civil action or disciplinary action by a
9 licensing board of another state that arises from the provision of or assistance
10 in legally protected health care activity.

11 (3) Definitions. As used in this subsection:

12 (A) "Health care provider" has the same meaning as in 18 V.S.A.
13 § 9496.

14 (B) "Legally protected health care activity" has the same meaning as
15 in 1 V.S.A. § 150.

16 Sec. 7. 26 V.S.A. § 1354 is amended to read:

17 § 1354. UNPROFESSIONAL CONDUCT

18 * * *

19 (d)(1) Health care providers. Notwithstanding any other law to the
20 contrary, no health care provider shall be subject to professional disciplinary

1 ~~action by the Board solely for providing or assisting in the provision of legally~~
2 ~~protected health care activity.~~

3 ~~(2) The Board shall not take adverse action on an application for~~
4 ~~certification, registration, or licensure of a qualified health care provider based~~
5 ~~on a criminal or civil action or disciplinary action by a licensing board of~~
6 ~~another state that arises from the provision of or assistance in legally protected~~
7 ~~health care activity.~~

8 ~~(3) Definitions. As used in this subsection:~~

9 ~~(A) "Health care provider" has the same meaning as in 18 V.S.A.~~
10 ~~§ 9496.~~

11 ~~(B) "Legally protected health care activity" has the same meaning as~~
12 ~~in 1 V.S.A. § 150.~~

13 * * * Pregnancy Centers * * *

14 Sec. 8. 9 V.S.A. chapter 63, subchapter 11 is added to read:

15 Subchapter 11. Pregnancy Services Center Fraud

16 § 2491. DEFINITIONS

17 As used in this subchapter:

18 (1) "Abortion" means any medical treatment intended to induce the
19 termination of, or to terminate, a clinically diagnosable pregnancy except for
20 the purpose of producing a live birth.

1 (2) "Client" means an individual who is inquiring about or seeking
2 services at a pregnancy services center.

3 (3) "Emergency contraception" means any drug approved by the U.S.
4 Food and Drug Administration as a contraceptive method for use after sexual
5 intercourse, whether provided over the counter or by prescription.

6 (4) "Health information" means any oral or written information in any
7 form or medium that relates to health insurance or the past, present, or future
8 physical or mental health or condition of a client.

9 (5) "Limited-services pregnancy center" means a pregnancy services
10 center that does not directly provide or provide referrals to clients, for
11 abortions or emergency contraception.

12 (6) "Pregnancy services center" means a facility, including a mobile
13 facility, where the primary purpose is to provide services to individuals who
14 are or may be pregnant and that either offers obstetric ultrasounds, obstetric
15 sonograms, or prenatal care to pregnant individuals or has the appearance of a
16 medical facility. A pregnancy services center has the appearance of a medical
17 facility if two or more of the following factors are present:

18 (A) The center offers pregnancy testing or pregnancy diagnosis, or
19 both.

20 (B) The center has staff or volunteers who wear medical attire or
21 uniforms.

1 ~~(C) The center contains one or more examination tables.~~

2 (D) The center contains a private or semiprivate room or area
3 containing medical supplies or medical instruments.

4 (E) The center has staff or volunteers who collect health information
5 from clients.

6 (F) The center is located on the same premises as a State-licensed
7 medical facility or provider or shares facility space with a State-licensed
8 medical provider.

9 (7) "Premises" means land and improvements or appurtenances or any
10 part thereof.

11 § 2492. UNFAIR AND DECEPTIVE ACT

12 (a) It is an unfair and deceptive act and practice in commerce and a
13 violation of section 2453 of this title for any limited-services pregnancy center
14 to disseminate or cause to be disseminated to the public any advertising about
15 the services or proposed services performed at that center if the management
16 of the center knows or, by the exercise of reasonable care, ought to know it is
17 untrue or clearly designed to mislead the public about the nature of services
18 provided. Advertising includes representations made directly to consumers;
19 marketing practices; communication in any print medium, such as newspapers,
20 magazines, mailers, or handouts, and any broadcast medium, such as television

1 ~~or radio, telephone marketing, or advertising over the Internet such as through~~
2 ~~websites and web ads.~~

3 (b) The Attorney General or State's Attorney has the same authority to
4 make rules, conduct civil investigations, and bring civil actions with respect to
5 violations of subsection (a) of this section as provided under subchapter 1 of
6 this chapter.

7 * * * Reports * * *

8 Sec. 9. DEPARTMENT OF HEALTH; ACCESS TO REPRODUCTIVE
9 HEALTH AND GENDER-AFFIRMING CARE SERVICES;
10 REPORT

11 On or before January 15, 2024, the Department of Health and the Green
12 Mountain Care Board shall, following consultation with relevant stakeholders,
13 submit a report to the House Committee on Health Care and the Senate
14 Committee on Health and Welfare identifying areas of the State in which
15 people do not have access to abortion or birth care or gender-affirming health
16 care services within a 50-mile radius, including recommendations to facilitate
17 access to those services in the identified areas.

1 ~~Sec. 10. BOARD OF MEDICAL PRACTICE; OFFICE OF~~
2 ~~PROFESSIONAL~~

3 ~~REGULATION; INTERSTATE COMPACTS; REPORT~~

4 ~~On or before November 1, 2024, the Board of Medical Practice, in~~
5 ~~consultation with the Office of Professional Regulation, shall submit a report~~
6 ~~to the House Committee on Health Care and the Senate Committee on Health~~
7 ~~and Welfare with findings and recommendations for legislative action to~~
8 ~~address any concerns regarding the State's participation in interstate licensure~~
9 ~~compacts as a result of the provisions of this act, specifically the State's~~
10 ~~participation in the Nurse Licensure Compact pursuant to 26 V.S.A. chapter~~
11 ~~28, subchapter 5 and the Interstate Medical Licensure Compact pursuant to 26~~
12 ~~V.S.A. chapter 23, subchapter 3A.~~

13 ~~* * * Emergency Contraception * * *~~

14 ~~Sec. 11. 26 V.S.A. chapter 36, subchapter 7 is added to read:~~

15 ~~Subchapter 7. Emergency Contraception~~

16 ~~§ 2077. DEFINITIONS~~

17 ~~As used in this subchapter:~~

18 ~~(1) "Emergency contraception" means any drug approved by the U.S.~~
19 ~~Food and Drug Administration as a contraceptive method for use after sexual~~
20 ~~intercourse, whether provided over the counter or by prescription.~~

1 ~~(2) "Physician" means a physician licensed under chapter 22 or 23 of~~
2 ~~this title.~~

3 § 2078. EMERGENCY CONTRACEPTION; STATEWIDE STANDING
4 ORDER

5 (a) The Department of Health shall ensure the issuance of a statewide
6 standing order to authorize the dispensing of emergency contraception by a
7 licensed pharmacist. The statewide standing order shall include written,
8 standardized procedures or protocols for the dispensing of emergency
9 contraception by a licensed pharmacist.

10 (b) Notwithstanding any provision of law to the contrary, the
11 Commissioner of Health, or a physician designated by the Commissioner, shall
12 issue a statewide standing order that may be used by a licensed pharmacist to
13 dispense emergency contraception in accordance with this subchapter.

14 (c)(1) Notwithstanding any provision of law to the contrary, a licensed
15 pharmacist may dispense emergency contraception in accordance with the
16 statewide standing order issued pursuant to subsection (b) of this section.

17 (2) Prior to dispensing emergency contraception pursuant to this
18 subchapter, a pharmacist may complete a training program approved by the
19 Commissioner of Health, which training shall include proper documentation,
20 quality assurance, and referral to additional services, including appropriate
21 recommendation that the patient follow up with a medical practitioner.

1 ~~(d) A pharmacist dispensing emergency contraception pursuant to this~~
2 subchapter shall report annually to the Department of Health, at the time and
3 in a manner established by the Department, the number of times the
4 pharmacist dispensed emergency contraception during the preceding calendar
5 year. Reports made pursuant to this subsection shall not identify any
6 individual patient. The reports shall be kept confidential and are not public
7 records and are not subject to the Public Records Act.

8 (e)(1) Except for an act of gross negligence or intentional misconduct, a
9 pharmacist who, acting in good faith, dispenses emergency contraception shall
10 not be subject to civil or criminal liability or professional disciplinary action
11 related to the use or administration of emergency contraception.

12 (2) Except for an act of gross negligence or intentional misconduct, the
13 Commissioner or a physician who issues the statewide standing order pursuant
14 to subsection (b) of this section shall not be subject to civil or criminal liability
15 or professional disciplinary action for issuing the order or related to the use or
16 administration of emergency contraception.

17 (f) The Department of Health and the Board of Pharmacy may adopt rules
18 in accordance with 3 V.S.A. chapter 25 as needed to carry out the provisions of
19 this subchapter.

~~§ 2070. EMERGENCY CONTRACEPTION; VENDING MACHINES~~

~~(a) A retail or institutional drug outlet licensed under this chapter may make over-the-counter emergency contraception and other nonprescription drugs or articles for the prevention of pregnancy or conception available through a vending machine or similar device.~~

~~(b) The Board shall adopt rules in accordance with 3 V.S.A. chapter 25 to regulate the location, operation, utilization, and oversight of the vending machines and similar devices described in subsection (a) of this section in a manner that balances consumer access with appropriate safeguards for theft prevention and safety.~~

~~* * * Higher Education; Health Care Services * * *~~

~~Sec. 12. 16 V.S.A. chapter 78 is added to read:~~

~~CHAPTER 78. ACCESS TO REPRODUCTIVE AND GENDER-
AFFIRMING HEALTH CARE SERVICES~~

~~§ 2501. DEFINITIONS~~

~~As used in this chapter:~~

~~(1) “Gender-affirming health care readiness” means each institution’s preparedness to provide gender-affirming health care services to students or assist students in obtaining gender-affirming health care services, including having in place equipment, protocols, patient educational materials, informational websites, and training for staff, provided, however, that gender-~~

1 ~~affirming health care readiness may include the provision of gender-affirming~~
2 health care services.

3 (2) “Gender-affirming health care services” has the same meaning as in
4 1 V.S.A. § 150.

5 (3) “Institution” means the University of Vermont or a college in the
6 Vermont State College system.

7 (4) “Medication abortion” means an abortion provided by medication
8 techniques.

9 (5) “Medication abortion readiness” means each institution’s
10 preparedness to provide medication abortions to students or assist students in
11 obtaining medication abortions, including having in place equipment,
12 protocols, patient educational materials, informational websites, and training
13 for staff; provided, however, that medication abortion readiness may include
14 the provision of medication abortions.

15 § 2502. GENDER-AFFIRMING HEALTH CARE AND MEDICATION

16 ABORTION SERVICES READINESS PLANS

17 (a) Each institution shall develop gender-affirming health care and
18 medication abortion readiness plans for its students.

19 (b)(1) The Department of Health shall issue guidance to all institutions
20 regarding the required contents of gender-affirming health care and medication
21 abortion readiness plans in accordance with the relative capabilities of each

1 ~~institution to provide services, including directly providing gender-affirming~~
2 health care services or medication abortions, or both, in a health center;
3 providing referrals for gender-affirming health care services or medication
4 abortions, or both, not provided in a health center; providing information to
5 students about obtaining gender-affirming health care services or medication
6 abortions, or both, available off-campus; and providing clinical and supportive
7 care in a health center for medication abortions using medication lawfully
8 dispensed through a retail or mail-order pharmacy.

9 (2) In developing the guidance, the Department shall consider factors
10 including:

11 (A) whether the institution has an operational health center on
12 campus;

13 (B) the institution's proximity to a hospital, clinic, or other facility
14 that provides gender-affirming health care services or medication abortions, as
15 applicable;

16 (C) the availability, convenience, and cost of public transportation
17 between the institution and the closest facility that provides gender-affirming
18 health care services or medication abortions, or both; and

19 (D) whether the institution employs health care providers on campus.

20 (c) The Department of Health shall review gender-affirming health care
21 and medication abortion readiness plans annually, taking into consideration

1 ~~any changes to the capacity of each institution to provide services to students~~
2 since the preceding approval of the plans.

3 (d) Each institution shall submit to the Department of Health annually any
4 amendment or revisions to its gender-affirming health care and medication
5 abortion readiness plans.

6 (e) On or before January 31 of each year, the Department of Health shall
7 determine whether the plans are adequate in proportion to each institution's
8 capacity. The Department shall provide further guidance to institutions with
9 plans deemed inadequate that includes remedial measures for the institution to
10 develop an adequate plan.

11 Sec. 13. GENDER-AFFIRMING HEALTH CARE AND MEDICATION
12 ABORTION SERVICES READINESS; IMPLEMENTATION

13 Each institution shall submit its first gender-affirming health care and
14 medication abortion services readiness plans required under 16 V.S.A.
15 § 2502(a) to the Department of Health on or before November 30, 2024, and
16 the Department shall review the plans for suitability on or before January 31,
17 2025.

18 * * * Prohibition on Disclosure of Protected Health Information * * *

19 Sec. 14. 18 V.S.A. § 1881 is amended to read:

20 § 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION

21 ~~PROHIBITED~~

1 ~~(a) As used in this section:~~

2 (1) "Covered entity" ~~shall have~~ has the same meaning as in 45 C.F.R. §
3 160.103.

4 (2) "Legally protected health care activity" has the same meaning as in
5 1 V.S.A. § 150.

6 (3) "Protected health information" ~~shall have~~ has the same meaning as
7 in 45 C.F.R. § 160.103.

8 (b) ~~A~~ Except as provided in subsection (c) of this section, a covered entity
9 shall not disclose protected health information unless the disclosure is
10 permitted under the Health Insurance Portability and Accountability Act of
11 1996 (HIPAA).

12 (c)(1) Except as provided in subsection (d) of this section, unless the
13 patient or the patient's conservator, guardian, or other authorized legal
14 representative explicitly consents in writing to the disclosure, a covered entity
15 shall not disclose any of the following in any civil or criminal action; in any
16 proceeding preliminary to a civil or criminal action; or in any probate,
17 legislative, or administrative proceeding, whether in or outside this State:

18 (A) any communication made to the covered entity by, or any
19 information obtained by the covered entity from, a patient or a patient's
20 conservator, guardian, or other authorized legal representative relating to any
21 legally protected health care activity, or

1 ~~(B) any information obtained by personal examination of a patient~~
2 relating to any legally protected health care activity.

3 (2) A covered entity shall inform the patient or the patient's conservator,
4 guardian, or other authorized legal representative of the patient's right to
5 withhold written consent to disclosure of the communications and information
6 described in subdivisions (1)(A) and (B) of this subsection.

7 (d) Notwithstanding any provision of subsection (c) of this section to the
8 contrary, the written consent of the patient or the patient's conservator,
9 guardian, or other authorized legal representative shall not be required for the
10 disclosure of the communications and information described in subdivisions
11 (c)(1)(A) and (B) of this section:

12 (1) pursuant to federal law, Vermont law, or rules adopted by the
13 Vermont Supreme Court;

14 (2) by a covered entity against whom a claim has been made, or there is
15 a reasonable belief will be made, in a civil or criminal action; in a proceeding
16 preliminary to a civil or criminal action; or in a probate, legislative, or
17 administrative proceeding to the covered entity's attorney or professional
18 liability insurer or the insurer's agent for use in the defense of the action or
19 proceeding.

1 ~~(2) to the Commissioner of Health for records of a patient of a covered~~
2 entity in connection with an investigation of a complaint, if the records are
3 related to the complaint; or

4 (4) in child abuse; abuse of a vulnerable adult, as defined in 33 V.S.A.
5 § 6902; abuse of an individual with a developmental disability, as defined in
6 section 8722 of this title; or abuse of an individual with an intellectual
7 disability, as defined in 1 V.S.A. § 146, is known or is in good faith suspected.

8 (e) Nothing in this section shall be construed to impede the lawful sharing
9 of medical records as permitted by federal law, Vermont law, or rules adopted
10 by the Vermont Supreme Court, except in the case of a subpoena commanding
11 the production, copying, or inspection of medical records relating to legally
12 protected health care activity.

13 * * * Effective Dates * * *

14 Sec. 15. EFFECTIVE DATES

15 (a) This section, Sec. 1 (definitions), Sec. 2 (medical malpractice), Secs. 6–
16 7 (unprofessional conduct), Sec. 8 (pregnancy services centers), Sec. 9–10
17 (reports), Sec. 12–13 (gender-affirming health care and medication abortion
18 readiness plans), and Sec. 14 (prohibition on disclosure of protected health
19 information) shall take effect on passage.

20 (b) Secs. 3–4 (insurance coverage) shall take effect on January 1, 2024 and
21 shall apply to all health insurance plans issued on and after January 1, 2024 on

1 ~~such date as a health insurer offers, issues, or renews the health insurance plan,~~
2 ~~but in no event later than January 1, 2025.~~

3 (c) Sec. 5 (state plan amendment) shall take effect on January 1, 2024,
4 except that the Agency of Human Services shall submit its request for approval
5 of Medicaid coverage of the services prescribed in Sec. 4 of this act to the
6 Centers for Medicare and Medicaid Services on or before July 1, 2023, and the
7 Medicaid coverage shall begin on the later of the date of approval or January
8 1, 2024.

9 (d) Sec. 11 (emergency contraception) shall take effect on September 1,
10 2023, except that the Department of Health shall issue the standing order
11 which shall take effect on September 1, 2023, on or before that date.

~~*** Definitions ***~~

~~Sec. 1. 1 V.S.A. § 150 is added to read:~~

~~§ 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY~~

~~(a) "Gender-affirming health care services" means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature relating to the treatment of gender dysphoria and gender incongruence. "Gender-affirming health care services" does not include conversion therapy as defined by 18 V.S.A. § 8351.~~

~~(b)(1) "Legally protected health care activity" means:~~

~~(A) the exercise and enjoyment, or attempted exercise and enjoyment, by any person of rights to reproductive health care services or gender-affirming health care services secured by this State;~~

~~(B) any act or omission undertaken to aid or encourage, or attempt to aid or encourage, any person in the exercise and enjoyment, or attempted exercise and enjoyment, of rights to reproductive health care services or gender-affirming health care services secured by this State, provided that the~~

~~provision of such a health care service by a person duly licensed under the laws of this State and physically present in this State shall be legally protected if the service is permitted under the laws of this State, regardless of the patient's location; or~~

~~(C) the provision, issuance, or use of, or enrollment in, insurance or other health coverage for reproductive health care services or gender-affirming health care services that are legal in this State, or any act to aid or encourage, or attempt to aid or encourage, any person in the provision, issuance, or use of, or enrollment in, insurance or other health coverage for those services, regardless of the location of the insured or individual seeking insurance or health coverage, if the insurance or health coverage is permitted under the laws of this State.~~

~~(2) Except as provided in subdivision (3) of this subsection, the protections applicable to "legally protected health care activity" shall not apply to a lawsuit, judgment, or civil, criminal, or administrative action that is based on conduct for which an action would exist under the laws of this State if the course of conduct that forms the basis for liability had occurred entirely in this State.~~

~~(3) Notwithstanding subdivision (2) of this subsection, the provision of a health care service by a person duly licensed under the laws of this State and physically present in this State shall be legally protected if the service is permitted under the laws of this State, regardless of the patient's location or whether the health care provider is licensed in the state where the patient is located at the time the service is rendered.~~

~~(c) "Reproductive health care services" means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature relating to pregnancy, contraception, assisted reproduction, pregnancy loss management, or the termination of a pregnancy.~~

~~*** Medical Malpractice ***~~

~~Sec. 2. 8 V.S.A. chapter 129 is amended to read:~~

~~CHAPTER 129. INSURANCE TRADE PRACTICES~~

~~***~~

~~§ 4722. DEFINITIONS~~

~~***~~

~~(4)(A) "Abusive litigation" means litigation or other legal action to deter, prevent, sanction, or punish any person engaging in legally protected~~

~~health care activity by:~~

~~(i) filing or prosecuting any action in any other state where liability, in whole or part, directly or indirectly, is based on legally protected health care activity that occurred in this State, including any action in which liability is based on any theory of vicarious, joint, or several liability derived therefrom; or~~

~~(ii) attempting to enforce any order or judgment issued in connection with any such action by any party to the action or any person acting on behalf of a party to the action.~~

~~(B) A lawsuit shall be considered to be based on conduct that occurred in this State if any part of any act or omission involved in the course of conduct that forms the basis for liability in the lawsuit occurs or is initiated in this State, whether or not such act or omission is alleged or included in any pleading or other filing in the lawsuit.~~

~~(5) “Legally protected health care activity” has the same meaning as in 1 V.S.A. § 150.~~

~~***~~

~~§ 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED~~

~~The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:~~

~~***~~

~~(7) Unfair discrimination; arbitrary underwriting action.~~

~~(A) Making or permitting any unfair discrimination between insureds of the same class and equal risk in the rates charged for any contract of insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contracts.~~

~~***~~

~~(F)(i) Discriminating against a health care provider as defined by 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider’s risk classification or premium charges on the basis that:~~

~~(I) the health care provider provides or assists in the provision of legally protected health care activity that is unlawful in another state;~~

~~(II) another state’s laws create potential or actual liability for that activity;~~

~~(III) abusive litigation against a provider concerning legal~~

~~protected health care activity resulted in a claim, settlement, or judgement against the provider; or~~

~~(IV) the license of the provider has been disciplined in any way by another state based solely on the provider's provision of legally protected health care activity.~~

~~(ii) For purposes of this subdivision (F), it shall not be unfairly discriminatory nor an arbitrary underwriting action against a health care provider if the risk classifications, premium charges, or other underwriting considerations are based on factors other than those listed in subdivision (i) of this subdivision (F).~~

~~***~~

~~*** Insurance Coverage ***~~

~~Sec. 3. 8 V.S.A. § 4088m is added to read:~~

~~§ 4088m. COVERAGE FOR GENDER-AFFIRMING HEALTH CARE SERVICES~~

~~(a) Definitions. As used in this section:~~

~~(1) "Gender-affirming health care services" has the same meaning as in 1 V.S.A. § 150.~~

~~(2) "Health insurance plan" means Medicaid and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this State by a health insurer as defined by 18 V.S.A. § 9402. For purposes of this section, health insurance plan includes any health benefit plan offered or administered by the State or any subdivision or instrumentality of the State. The term does not include benefit plans providing coverage for a specific disease or other limited benefit coverage, except that it includes any accident and sickness health plan.~~

~~(b) Coverage.~~

~~(1) A health insurance plan shall provide coverage for gender-affirming health care services that:~~

~~(A) are medically necessary and clinically appropriate for the individual's diagnosis or health condition; and~~

~~(B) are included in the State's essential health benefits benchmark plan.~~

~~(2) Coverage provided pursuant to this section by Medicaid or any other~~

~~public health care assistance program shall comply with all federal requirements imposed by the Centers for Medicare and Medicaid Services.~~

~~(3) Nothing in this section shall prohibit a health insurance plan from providing greater coverage for gender-affirming health care services than is required under this section.~~

~~(c) Cost sharing. A health insurance plan shall not impose greater coinsurance, co-payment, deductible, or other cost-sharing requirements for coverage of gender-affirming health care services than apply to the diagnosis and treatment of any other physical or mental condition under the plan.~~

Sec. 4. 8 V.S.A. § 4099e is added to read:

§ 4099e. COVERAGE FOR ABORTION AND ABORTION-RELATED SERVICES

(a) Definitions. As used in this section:

(1) "Abortion" means any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth.

(2) "Health insurance plan" means Medicaid and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this State by a health insurer as defined by 18 V.S.A. § 9402. For purposes of this section, health insurance plan shall include any health benefit plan offered or administered by the State or any subdivision or instrumentality of the State. The term shall not include benefit plans providing coverage for a specific disease or other limited benefit coverage, except that it shall include any accident and sickness health plan.

(b) Coverage. A health insurance plan shall provide coverage for abortion and abortion-related care.

(c) Cost sharing. The coverage required by this section shall not be subject to any co-payment, deductible, coinsurance, or other cost-sharing requirement or additional charge, except:

(1) to the extent such coverage would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223; and

(2) for coverage provided by Medicaid.

Sec. 5. STATE PLAN AMENDMENT

The Agency of Human Services shall seek a state plan amendment from the Centers for Medicare and Medicaid Services or federal authorities if needed to allow Vermont's Medicaid program to provide coverage consistent with this act.

** * * Professional Regulation * * **

Sec. 6. 3 V.S.A. § 129a is amended to read:

§ 129a. UNPROFESSIONAL CONDUCT

** * **

(f)(1) Health care providers. Notwithstanding subsection (e) of this section or any other law to the contrary, no health care provider shall be subject to professional disciplinary action by a board or the Director, nor shall a board or the Director take adverse action on an application for certification, registration, or licensure of a qualified health care provider, based solely on:

(A) the health care provider providing or assisting in the provision of legally protected health care activity; or

(B) a criminal or civil action or disciplinary action against the health care provider by a licensing board of another state based solely on the provider providing or assisting in the provision of legally protected health care activity.

(2) Definitions. As used in this subsection:

(A) "Health care provider" has the same meaning as in 18 V.S.A. § 9496.

(B) "Legally protected health care activity" has the same meaning as in 1 V.S.A. § 150.

Sec. 7. 26 V.S.A. § 1354 is amended to read:

§ 1354. UNPROFESSIONAL CONDUCT

** * **

(d)(1) Health care providers. Notwithstanding any other law to the contrary, no health care provider shall be subject to professional disciplinary action by the Board, nor shall the Board take adverse action on an application for certification, registration, or licensure of a qualified health care provider, based solely on:

(A) the health care provider providing or assisting in the provision of legally protected health care activity; or

(B) a criminal or civil action or disciplinary action against the health

~~are provider by a licensing board of another state based solely on the provider providing or assisting in the provision of legally protected health care activity.~~

~~(2) Definitions. As used in this subsection:~~

~~(A) "Health care provider" has the same meaning as in 18 V.S.A. § 9496.~~

~~(B) "Legally protected health care activity" has the same meaning as in 1 V.S.A. § 150.~~

~~*** Pregnancy Centers ***~~

~~Sec. 8. 9 V.S.A. chapter 63, subchapter 11 is added to read:~~

~~Subchapter 11. Pregnancy Services Center Fraud~~

~~§ 2491. FINDINGS; LEGISLATIVE INTENT~~

~~(a) Findings. The General Assembly finds that:~~

~~(1) Centers that seek to counsel clients against abortion, often referred to as crisis pregnancy centers or limited-services pregnancy centers, have become common across the country, including in Vermont. Accurate information about the services that a limited-services pregnancy center performs, in addition to forthright acknowledgement of its limitations, is essential to enable pregnant individuals in this State to make informed decisions about their care. This includes individuals being informed of whether they are receiving services from a licensed and qualified health care provider at a limited-services pregnancy center, as this allows individuals to determine if they need to seek medical care elsewhere in order to continue or terminate a pregnancy.~~

~~(2) Although some limited-services pregnancy centers openly acknowledge in their advertising, on their websites, and at their facilities that they neither provide abortions nor refer clients to other providers of abortion services, others provide confusing and misleading information to pregnant individuals contemplating abortion by leading those individuals to believe that their facilities offer abortion services and unbiased counseling. Many limited-services pregnancy centers have promoted patently false or biased medical claims about abortion, pregnancy, contraception, and reproductive health care providers.~~

~~(3) False and misleading advertising by centers that do not offer or refer clients for abortion is of special concern to the State because of the time-sensitive and constitutionally protected nature of the decision to continue or terminate a pregnancy. When a pregnant individual is misled into believing~~

~~that a center offers services that it does not in fact offer or receives false or misleading information regarding health care options, the individual loses time crucial to the decision whether to terminate a pregnancy and may lose the option to choose a particular method or to terminate a pregnancy at all.~~

~~(4) Telling the truth is how trained health care providers demonstrate respect for patients, foster trust, promote self-determination, and cultivate an environment where best practices in shared decision-making can flourish. Without veracity in information and communication, it is difficult for individuals to make informed, voluntary choices essential in fulfilling autonomy-based obligations.~~

~~(5) Advertising strategies and educational information about health care options that lack transparency, use misleading or ambiguous terminology, misrepresent or obfuscate services provided, or provide factually inaccurate information are a form of manipulation that disrespects individuals, undermines trust, broadens health disparity, and can result in patient harm.~~

~~(b) Intent.~~

~~(1) It is the intent of the General Assembly to ensure that the public is provided with accurate, factual information about the types of health care services that are available to pregnant individuals in this State. The General Assembly respects the constitutionally protected right of each individual to personal reproductive autonomy, which includes the right to receive clear, honest, and nonmisleading information about the individual's options and to make informed, voluntary choices after considering all relevant information.~~

~~(2) The General Assembly respects the right of limited-services pregnancy centers to counsel individuals against abortion, and nothing in this subchapter should be construed to regulate, limit, or curtail such advocacy.~~

~~§ 2492. DEFINITIONS~~

~~As used in this subchapter:~~

~~(1) "Abortion" means any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth.~~

~~(2) "Client" means an individual who is inquiring about or seeking services at a pregnancy services center.~~

~~(3) "Emergency contraception" means any drug approved by the U.S. Food and Drug Administration as a contraceptive method for use after sexual intercourse, whether provided over the counter or by prescription.~~

~~(4) "Health information" means any oral or written information in any~~

~~form or medium that relates to health insurance or the past, present, or future physical or mental health or condition of a client.~~

~~(5) "Limited-services pregnancy center" means a pregnancy services center that does not directly provide, or provide referrals to clients, for abortions or emergency contraception.~~

~~(6) "Pregnancy services center" means a facility, including a mobile facility, where the primary purpose is to provide services to individuals who are or may be pregnant and that either offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant individuals or has the appearance of a medical facility. A pregnancy services center has the appearance of a medical facility if two or more of the following factors are present:~~

~~(A) The center offers pregnancy testing or pregnancy diagnosis, or both.~~

~~(B) The center has staff or volunteers who wear medical attire or uniforms.~~

~~(C) The center contains one or more examination tables.~~

~~(D) The center contains a private or semiprivate room or area containing medical supplies or medical instruments.~~

~~(E) The center has staff or volunteers who collect health information from clients.~~

~~(F) The center is located on the same premises as a State-licensed medical facility or provider or shares facility space with a State-licensed medical provider.~~

~~(7) "Premises" means land and improvements or appurtenances or any part thereof.~~

~~§ 2493. UNFAIR AND DECEPTIVE ACT~~

~~(a) It is an unfair and deceptive act and practice in commerce and a violation of section 2453 of this title for any limited-services pregnancy center to disseminate or cause to be disseminated to the public any advertising about the services or proposed services performed at that center that is untrue or clearly designed to mislead the public about the nature of services provided. Advertising includes representations made directly to consumers; marketing practices; communication in any print medium, such as newspapers, magazines, mailers, or handouts; and any broadcast medium, such as television or radio, telephone marketing, or advertising over the Internet such as through websites and web ads. For purposes of this chapter, advertising or the provision of services by a limited services pregnancy center is an act in~~

~~Commerce.~~

~~(b) The medical director of a pregnancy services center, or the individual charged with supervising health care services provided by center staff or volunteers at a pregnancy services center, shall be responsible, legally and professionally, for the activities of staff and volunteers performing duties for and on behalf of the pregnancy services center. The medical director or individual shall ensure that the staff of the pregnancy services center, including the medical director or individual, and any volunteers providing health care services maintain a level of supervision, training, and practice consistent with legal requirements established under Vermont law, including those set forth in Title 26, and professional standards of practice. Failure to conduct or to ensure that health care services are conducted in accordance with State law and professional standards of practice may constitute unprofessional conduct under 3 V.S.A. § 129a and 26 V.S.A. § 1354.~~

~~(c) The Attorney General has the same authority to make rules, conduct civil investigations, and bring civil actions with respect to violations of subsection (a) of this section as provided under subchapter 1 of this chapter.~~

~~* * * Reports; Interstate Compacts * * *~~

~~Sec. 9. AGENCY OF HUMAN SERVICES; GREEN MOUNTAIN CARE BOARD; ACCESS TO REPRODUCTIVE HEALTH AND GENDER-AFFIRMING CARE SERVICES~~

~~(a) The Agency of Human Services shall include access to reproductive health care services and access to gender-affirming health care services as indicators for equitable access to health care in its Community Profiles of Health and Well-Being analysis.~~

~~(b) The Green Mountain Care Board shall include reproductive health care service and gender-affirming health care service needs in the Health Resource Allocation Plan analysis pursuant to 18 V.S.A. § 9405.~~

~~Sec. 10. BOARD OF MEDICAL PRACTICE; OFFICE OF PROFESSIONAL REGULATION; INTERSTATE COMPACTS; REPORT~~

~~On or before November 1, 2024, the Office of Professional Regulation, in consultation with the Board of Medical Practice, shall submit a report to the House Committee on Health Care and the Senate Committee on Health and Welfare with findings and recommendations for legislative action to address any concerns regarding the State's participation, or contemplated participation, in interstate licensure compacts as a result of the provisions of this act, including the State's participation in the Nurse Licensure Compact pursuant to 26 V.S.A. chapter 28, subchapter 5 and the Interstate Medical Licensure Compact pursuant to 26 V.S.A. chapter 23, subchapter 24.~~

~~Sec. 10a. 26 V.S.A. chapter 56 is amended to read:~~

~~CHAPTER 56. OUT-OF-STATE TELEHEALTH LICENSURE &
REGISTRATION AND INTERSTATE COMPACTS~~

~~Subchapter 1. Out-of-State Telehealth Licensure And Registration~~

~~* * *~~

~~Subchapter 2. Interstate Compacts; Health Care Provider Compacts~~

~~§ 3071. HEALTH CARE PROVIDER COMPACTS; DIRECTION TO
VERMONT REPRESENTATIVES~~

~~(a) The General Assembly finds that a state's prohibition of or limitation on the provision of gender-affirming health care services or reproductive health care services, or both, as defined by 1 V.S.A. § 150, prohibits health care providers from following health care best practices and is a failure on the part of the state to provide health care services that are medically necessary and clinically appropriate for its residents. Therefore, it is the General Assembly's intent to protect the ability of professionals licensed, certified, or registered in Vermont, and applicants from other member states seeking to practice a profession in Vermont pursuant to an interstate compact or agreement, to have the benefit of compacts and agreements while at the same time engaging in, providing, or otherwise facilitating, personally or professionally, gender-affirming health care and reproductive health care services.~~

~~(b) Vermont's representative or delegate for an interstate compact or agreement related to health care shall seek an amendment or exception to the compact or agreement language, rules, or bylaws as necessary, so that if a licensee is disciplined by another state solely for providing or assisting in the provision of gender-affirming health care services or reproductive health care services that would be legal and meet professional standards of care if provided in Vermont, the compact or agreement does not require that Vermont take professional disciplinary action against the licensee.~~

~~* * * Emergency Contraception * * *~~

~~Sec. 11. 26 V.S.A. chapter 36, subchapter 1 is amended to read:~~

~~Subchapter 1. General Provisions~~

~~* * *~~

~~§ 2022. DEFINITIONS~~

~~As used in this chapter:~~

~~* * *~~

~~(22) "Emergency contraception" means any drug approved by the U.S. Food and Drug Administration as a contraceptive method for use after sexual intercourse, whether provided over the counter or by prescription.~~

~~§ 2023. CLINICAL PHARMACY; PRESCRIBING~~

~~* * *~~

~~(b) A pharmacist may prescribe in the following contexts:~~

~~* * *~~

~~(2) State protocol.~~

~~(A) A pharmacist may prescribe, order, or administer in a manner consistent with valid State protocols that are approved by the Commissioner of Health after consultation with the Director of Professional Regulation and the Board and the ability for public comment:~~

~~* * *~~

~~(ix) emergency prescribing of albuterol or glucagon while contemporaneously contacting emergency services; and~~

~~(x) tests for SARS-CoV for asymptomatic individuals or related serology for individuals by entities holding a Certificate of Waiver pursuant to the Clinical Laboratory Amendments of 1988 (42 U.S.C. § 263a); and~~

~~(xi) emergency contraception.~~

~~* * *~~

~~Sec. 11a. 26 V.S.A. § 2077 is added to read:~~

~~§ 2077. EMERGENCY CONTRACEPTION; VENDING MACHINES~~

~~(a) A retail or institutional drug outlet licensed under this chapter or a postsecondary school, as defined in and subject to 16 V.S.A. § 176, may make over-the-counter emergency contraception and other nonprescription drugs or articles for the prevention of pregnancy or conception available through a vending machine or similar device.~~

~~(b) The Board may adopt rules in accordance with 3 V.S.A. chapter 25 to regulate the location, operation, utilization, and oversight of the vending machines and similar devices described in subsection (a) of this section in a manner that balances consumer access with appropriate safeguards for theft prevention and safety.~~

~~* * * Higher Education; Health Care Services * * *~~

~~Sec. 12. 16 V.S.A. chapter 78 is added to read:~~

~~CHAPTER 78. ACCESS TO REPRODUCTIVE AND GENDER-AFFIRMING
HEALTH CARE SERVICES~~

~~§ 2501. DEFINITIONS~~

~~As used in this chapter:~~

~~(1) “Gender-affirming health care readiness” means each institution’s preparedness to provide gender-affirming health care services to students or assist students in obtaining gender-affirming health care services, including having in place equipment, protocols, patient educational materials, informational websites, and training for staff; provided, however, that gender-affirming health care readiness may include the provision of gender-affirming health care services.~~

~~(2) “Gender-affirming health care services” has the same meaning as in 1 V.S.A. § 150.~~

~~(3) “Institution” means the University of Vermont or a college in the Vermont State College system.~~

~~(4) “Medication abortion” means an abortion provided by medication techniques.~~

~~(5) “Reproductive health care services” has the same meaning as in 1 V.S.A. § 150 and includes medication abortion.~~

~~(6) “Reproductive health care readiness” means each institution’s preparedness to provide reproductive health care services to students or assist students in obtaining reproductive health care services, including having in place equipment, protocols, patient educational materials, informational websites, and training for staff; provided, however, that reproductive health care readiness may include the provision of reproductive health care services.~~

~~(7) “Telehealth” has the same meaning as in 26 V.S.A. § 3052.~~

~~§ 2502. GENDER-AFFIRMING HEALTH CARE AND REPRODUCTIVE
HEALTH CARE READINESS; REPORTS~~

~~(a) Each institution shall report to the Agency of Human Services annually, on or before November 1, on the current status of its gender-affirming health care and reproductive health care readiness, including:~~

~~(1) whether the institution has an operational health center on campus;~~

~~(2) whether the institution employs health care providers on campus;~~

~~(3) the types of gender-affirming health care services and reproductive health care services that the institution offers to its students on campus and the supports that the institution provides to students who receive those services;~~

~~(4) the institution's efforts to assist students with obtaining gender-affirming health care services and reproductive health care services from licensed health care professionals through telehealth;~~

~~(5) the institution's proximity to a hospital, clinic, or other facility that provides gender-affirming health care services or reproductive health care services, or both, that are not available to students on campus;~~

~~(6) the referral information that the institution provides regarding facilities that offer gender-affirming health care services and reproductive health care services that are not available to students on campus, including information regarding the scope of the services that are available at each such facility; and~~

~~(7) the availability, convenience, and cost of public transportation between the institution and the closest facility that provides gender-affirming health care services or reproductive health care services, or both, and whether the institution provides transportation.~~

~~(b) On or before January 31 of each year, the Agency of Human Services shall compile the materials submitted pursuant to subsection (a) of this section and report to the House Committees on Education, on Health Care, and on Human Services and the Senate Committees on Education and on Health and Welfare on the status of gender-affirming health care and reproductive health care readiness at Vermont's institutions.~~

~~Sec. 13. GENDER-AFFIRMING HEALTH CARE AND REPRODUCTIVE HEALTH CARE READINESS; IMPLEMENTATION~~

~~Each institution shall submit its first report on the status of its gender-affirming health care and reproductive health care readiness as required under 16 V.S.A. § 2502(a) to the Agency of Human Services on or before November 1, 2023, and the Agency shall provide its first legislative report on or before January 31, 2024.~~

~~*** Prohibition on Disclosure of Protected Health Information ***~~

~~Sec. 14. 18 V.S.A. § 1881 is amended to read:~~

~~§ 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION PROHIBITED~~

~~(a) As used in this section:~~

~~(1) "Business associate" has the same meaning as in 45 C.F.R. § 160.103.~~

~~(2) "Covered entity" shall have has the same meaning as in 45 C.F.R. § 160.103.~~

~~(3) "Legally protected health care activity" has the same meaning as in 1 V.S.A. § 150.~~

~~(2)(4) "Protected health information" shall have has the same meaning as in 45 C.F.R. § 160.103.~~

~~(b) A covered entity or business associate shall not disclose protected health information unless the disclosure is permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).~~

~~(c) In order to protect patients and providers who engage in legally protected health care activity, a covered entity or business associate shall not disclose protected health information related to a legally protected health care activity for use in a civil or criminal action; a proceeding preliminary to a civil or criminal action; or a probate, legislative, or administrative proceeding unless the disclosure meets one or more of the following conditions:~~

~~(1) The disclosure is authorized by the patient or the patient's conservator, guardian, or other authorized legal representative.~~

~~(2) The disclosure is specifically required by federal law, Vermont law, or rules adopted by the Vermont Supreme Court.~~

~~(3) The disclosure is ordered by a court of competent jurisdiction pursuant to federal law, Vermont law, or rules adopted by the Vermont Supreme Court. An order compelling disclosure under this subdivision shall include the court's determination that good cause exists to require disclosure of the information related to legally protected health care activity.~~

~~(4) The disclosure is to be made to a person designated by the covered entity or business associate and will be used solely in the defense of the covered entity or business associate against a claim that has been made, or there is a reasonable belief will be made, against the covered entity or business associate in a civil or criminal action, a proceeding preliminary to a civil or criminal action, or a probate, legislative, or administrative proceeding.~~

~~(5) The disclosure is to Vermont's Board of Medical Practice or Office of Professional Regulation, as applicable, in connection with a bona fide investigation in Vermont of a licensed, certified, or registered health care provider.~~

* * * Effective Dates * * *

Sec. 15. EFFECTIVE DATES

~~(a) This section, Sec. 1 (definitions), Sec. 2 (medical malpractice), Secs. 6 and 7 (unprofessional conduct), Sec. 8 (pregnancy services centers), Secs. 9 and 10 (reports), Sec. 11a (emergency contraception vending machines), Secs.~~

~~and 13 (gender-affirming health care and reproductive health care readiness; reports), and Sec. 14 (prohibition on disclosure of protected health information) shall take effect on passage.~~

~~(b) Secs. 3 and 4 (insurance coverage) shall take effect on January 1, 2024 and shall apply to all health insurance plans issued on and after January 1, 2024 on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than January 1, 2025.~~

~~(c) Sec. 5 (state plan amendment) shall take effect on January 1, 2024, except that the Agency of Human Services shall submit its request for approval of Medicaid coverage of the services prescribed in Sec. 4 of this act, if needed, to the Centers for Medicare and Medicaid Services on or before July 1, 2023, and the Medicaid coverage shall begin on the later of the date of approval or January 1, 2024.~~

~~(d) Sec. 10a (interstate compacts; state representatives) shall take effect on July 1, 2023.~~

~~(e) Sec. 11 (emergency contraception) shall take effect on or before September 1, 2023, on such date as the Commissioner of Health approves the State protocol.~~

** * * Definitions * * **

Sec. 1. 1 V.S.A. § 150 is added to read:

§ 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

(a) “Gender-affirming health care services” means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature, including medication, relating to the treatment of gender dysphoria and gender incongruence. “Gender-affirming health care services” does not include conversion therapy as defined by 18 V.S.A. § 835I.

(b)(1) “Legally protected health care activity” means:

(A) the exercise and enjoyment, or attempted exercise and enjoyment, by any person of rights to reproductive health care services or gender-affirming health care services secured by this State;

(B) any act or omission undertaken to aid or encourage, or attempt to aid or encourage, any person in the exercise and enjoyment, or attempted exercise and enjoyment, of rights to reproductive health care services or gender-affirming health care services secured by this State, provided that the provision of such a health care service by a person duly licensed under the laws of this State and physically present in this State shall be legally protected

if the service is permitted under the laws of this State, regardless of the patient's location; or

(C) the provision, issuance, or use of, or enrollment in, insurance or other health coverage for reproductive health care services or gender-affirming health care services that are legal in this State, or any act to aid or encourage, or attempt to aid or encourage, any person in the provision, issuance, or use of, or enrollment in, insurance or other health coverage for those services, regardless of the location of the insured or individual seeking insurance or health coverage, if the insurance or health coverage is permitted under the laws of this State.

(2) Except as provided in subdivision (3) of this subsection, the protections applicable to "legally protected health care activity" shall not apply to a lawsuit; judgment; or civil, criminal, or administrative action that is based on conduct for which an action would exist under the laws of this State if the course of conduct that forms the basis for liability had occurred entirely in this State.

(3) Notwithstanding subdivision (2) of this subsection, the provision of a health care service by a person duly licensed under the laws of this State and physically present in this State shall be legally protected if the service is permitted under the laws of this State, regardless of the patient's location or whether the health care provider is licensed in the state where the patient is located at the time the service is rendered.

(c)(1) "Reproductive health care services" means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature, including medication, relating to pregnancy, contraception, assisted reproduction, pregnancy loss management, or the termination of a pregnancy.

(2) "Reproductive health care services" includes medication that was approved by the U.S. Food and Drug Administration (FDA) for termination of a pregnancy as of January 1, 2023, regardless of the medication's current FDA approval status:

(A) when such medication is procured, ordered, stored, distributed, prescribed, dispensed, or administered, or a combination thereof, by a person duly licensed under the laws of this State, as long as the licensee's actions conform to the essential standards of acceptable and prevailing practice for the licensee's profession; or

(B) when such medication is used by an individual.

** * * Medical Malpractice * * **

Sec. 2. 8 V.S.A. chapter 129 is amended to read:

CHAPTER 129. INSURANCE TRADE PRACTICES

** * **

§ 4722. DEFINITIONS

** * **

(4)(A) “Abusive litigation” means litigation or other legal action to deter, prevent, sanction, or punish any person engaging in legally protected health care activity by:

(i) filing or prosecuting any action in any other state where liability, in whole or part, directly or indirectly, is based on legally protected health care activity that occurred in this State, including any action in which liability is based on any theory of vicarious, joint, or several liability derived therefrom; or

(ii) attempting to enforce any order or judgment issued in connection with any such action by any party to the action or any person acting on behalf of a party to the action.

(B) A lawsuit shall be considered to be based on conduct that occurred in this State if any part of any act or omission involved in the course of conduct that forms the basis for liability in the lawsuit occurs or is initiated in this State, whether or not such act or omission is alleged or included in any pleading or other filing in the lawsuit.

(5) “Legally protected health care activity” has the same meaning as in 1 V.S.A. § 150.

** * **

§ 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED

The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:

** * **

(7) Unfair discrimination; arbitrary underwriting action.

(A) Making or permitting any unfair discrimination between insureds of the same class and equal risk in the rates charged for any contract of insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contracts.

* * *

(F)(i) Discriminating against a health care provider, as defined by 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider's risk classification or premium charges on the basis that:

(I) the health care provider provides or assists in the provision of legally protected health care activity that is unlawful in another state;

(II) another state's laws create potential or actual liability for that activity;

(III) abusive litigation against a provider concerning legally protected health care activity resulted in a claim, settlement, or judgement against the provider; or

(IV) the license of the provider has been disciplined in any way by another state based solely on the provider's provision of legally protected health care activity.

(ii) For purposes of this subdivision (F), it shall not be unfairly discriminatory nor an arbitrary underwriting action against a health care provider if the risk classifications, premium charges, or other underwriting considerations are based on factors other than those listed in subdivision (i) of this subdivision (F).

* * *

* * * Insurance Coverage * * *

Sec. 3. 8 V.S.A. § 4088m is added to read:

§ 4088m. COVERAGE FOR GENDER-AFFIRMING HEALTH CARE SERVICES

(a) Definitions. As used in this section:

(1) "Gender-affirming health care services" has the same meaning as in 1 V.S.A. § 150.

(2) "Health insurance plan" means Medicaid and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this State by a health insurer as defined by 18 V.S.A. § 9402. For purposes of this section, health insurance plan includes any health benefit plan offered or administered by the State or any subdivision or instrumentality of the State. The term does not include benefit plans providing coverage for a specific disease or other limited benefit

coverage, except that it includes any accident and sickness health plan.

(b) Coverage.

(1) A health insurance plan shall provide coverage for gender-affirming health care services that:

(A) are medically necessary and clinically appropriate for the individual's diagnosis or health condition; and

(B) are included in the State's essential health benefits benchmark plan.

(2) Coverage provided pursuant to this section by Medicaid or any other public health care assistance program shall comply with all federal requirements imposed by the Centers for Medicare and Medicaid Services.

(3) Nothing in this section shall prohibit a health insurance plan from providing greater coverage for gender-affirming health care services than is required under this section.

(c) Cost sharing. A health insurance plan shall not impose greater coinsurance, co-payment, deductible, or other cost-sharing requirements for coverage of gender-affirming health care services than apply to the diagnosis and treatment of any other physical or mental condition under the plan.

Sec. 4. 8 V.S.A. § 4099e is added to read:

§ 4099e. COVERAGE FOR ABORTION AND ABORTION-RELATED SERVICES

(a) Definitions. As used in this section:

(1) "Abortion" means any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth.

(2) "Health insurance plan" means Medicaid and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this State by a health insurer as defined by 18 V.S.A. § 9402. For purposes of this section, health insurance plan shall include any health benefit plan offered or administered by the State or any subdivision or instrumentality of the State. The term shall not include benefit plans providing coverage for a specific disease or other limited benefit coverage, except that it shall include any accident and sickness health plan.

(b) Coverage. A health insurance plan shall provide coverage for abortion

and abortion-related care.

(c) Cost sharing. The coverage required by this section shall not be subject to any co-payment, deductible, coinsurance, or other cost-sharing requirement or additional charge, except:

(1) to the extent such coverage would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223; and

(2) for coverage provided by Medicaid.

Sec. 5. STATE PLAN AMENDMENT

The Agency of Human Services shall seek a state plan amendment from the Centers for Medicare and Medicaid Services or federal authorities if needed to allow Vermont's Medicaid program to provide coverage consistent with this act.

* * * Professional Regulation * * *

Sec. 6. 3 V.S.A. § 129a is amended to read:

§ 129a. UNPROFESSIONAL CONDUCT

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items or any combination of items, whether the conduct at issue was committed within or outside the State, shall constitute unprofessional conduct:

* * *

(7) Willfully making or filing false reports or records in the practice of the profession, willfully impeding or obstructing the proper making or filing of reports or records, ~~or~~ willfully failing to file the proper reports or records, or willfully providing inaccurate health or medical information to a patient, including purposeful misrepresentation of a patient's health status.

* * *

(29) Providing or claiming to provide services or medications that are purported to reverse the effects of a medication abortion.

* * *

(f)(1) Health care providers. Notwithstanding subsection (e) of this section or any other law to the contrary, no health care provider who is certified, registered, or licensed in Vermont shall be subject to professional disciplinary action by a board or the Director, nor shall a board or the Director take

adverse action on an application for certification, registration, or licensure of a qualified health care provider, based solely on:

(A) the health care provider providing or assisting in the provision of legally protected health care activity; or

(B) a criminal, civil, or disciplinary action in another state against the health care provider that is based solely on the provider providing or assisting in the provision of legally protected health care activity.

(2) Definitions. As used in this subsection:

(A) “Health care provider” means a person who provides professional health care services to an individual during that individual’s medical care, treatment, or confinement.

(B) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a physical or mental health condition, including procedures, products, devices, and medications.

(C) “Legally protected health care activity” has the same meaning as in 1 V.S.A. § 150.

Sec. 7. 26 V.S.A. § 1354 is amended to read:

§ 1354. UNPROFESSIONAL CONDUCT

* * *

(d)(1) Health care providers. Notwithstanding any other law to the contrary, no health care provider who is certified, registered, or licensed in Vermont shall be subject to professional disciplinary action by the Board, nor shall the Board take adverse action on an application for certification, registration, or licensure of a qualified health care provider, based solely on:

(A) the health care provider providing or assisting in the provision of legally protected health care activity; or

(B) a criminal, civil, or disciplinary action in another state against the health care provider that is based solely on the provider providing or assisting in the provision of legally protected health care activity.

(2) Definitions. As used in this subsection:

(A) “Health care provider” means a person who provides professional health care services to an individual during that individual’s medical care, treatment, or confinement.

(B) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a physical or mental health condition, including procedures, products, devices, and medications.

(C) “Legally protected health care activity” has the same meaning as in 1 V.S.A. § 150.

** * * Pregnancy Centers * * **

Sec. 8. 9 V.S.A. chapter 63, subchapter 11 is added to read:

Subchapter 11. Pregnancy Services Centers

§ 2491. FINDINGS; LEGISLATIVE INTENT

(a) Findings. The General Assembly finds that:

(1) Centers that seek to counsel clients against abortion, often referred to as crisis pregnancy centers or limited-services pregnancy centers, have become common across the country, including in Vermont. Accurate information about the services that a limited-services pregnancy center performs, in addition to forthright acknowledgement of its limitations, is essential to enable individuals in this State to make informed decisions about their care. This includes individuals being informed of whether they are receiving services from a licensed and qualified health care provider at a limited-services pregnancy center, as this allows individuals to determine if they need to seek medical care elsewhere in order to continue or terminate a pregnancy.

(2) Although some limited-services pregnancy centers openly acknowledge in their advertising, on their websites, and at their facilities that they neither provide abortions nor refer clients to other providers of abortion services, others provide confusing and misleading information to pregnant individuals contemplating abortion by leading those individuals to believe that their facilities offer abortion services and unbiased counseling. Some limited-services pregnancy centers have promoted patently false or biased medical claims about abortion, pregnancy, contraception, and reproductive health care providers.

(3) False and misleading advertising by centers that do not offer or refer clients for abortion is of special concern to the State because of the time-sensitive and constitutionally protected nature of the decision to continue or terminate a pregnancy. When a pregnant individual is misled into believing that a center offers services that it does not in fact offer or receives false or misleading information regarding health care options, the individual loses time crucial to the decision whether to terminate a pregnancy and may lose the option to choose a particular method or to terminate a pregnancy at all.

(4) Telling the truth is how trained health care providers demonstrate respect for patients, foster trust, promote self-determination, and cultivate an environment where best practices in shared decision-making can flourish.

Without veracity in information and communication, it is difficult for individuals to make informed, voluntary choices that are essential to one's sense of personal agency and autonomy.

(5) Advertising strategies and educational information about health care options that lack transparency, use misleading or ambiguous terminology, misrepresent or obfuscate services provided, or provide factually inaccurate information are a form of manipulation that disrespects individuals, undermines trust, broadens health disparity, and can result in patient harm.

(b) Intent.

(1) It is the intent of the General Assembly to ensure that the public is provided with accurate, factual information about the types of health care services that are available to pregnant individuals in this State. The General Assembly respects the constitutionally protected right of each individual to personal reproductive autonomy, which includes the right to receive clear, honest, and nonmisleading information about the individual's options and to make informed, voluntary choices after considering all relevant information.

(2) The General Assembly respects the right of limited-services pregnancy centers to counsel individuals against abortion, and nothing in this subchapter should be construed to regulate, limit, or curtail such advocacy.

§ 2492. DEFINITIONS

As used in this subchapter:

(1) "Abortion" means any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth.

(2) "Client" means an individual who is inquiring about or seeking services at a pregnancy services center.

(3) "Emergency contraception" means any drug approved by the U.S. Food and Drug Administration as a contraceptive method for use after sexual intercourse, whether provided over the counter or by prescription.

(4) "Health information" means any oral or written information in any form or medium that relates to health insurance or the past, present, or future physical or mental health or condition of a client.

(5) "Limited-services pregnancy center" means a pregnancy services center that does not directly provide, or provide referrals to clients for, abortions or emergency contraception.

(6) "Pregnancy services center" means a facility, including a mobile facility, where the primary purpose is to provide services to individuals who

are or may be pregnant and that either offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant individuals or has the appearance of a medical facility. A pregnancy services center has the appearance of a medical facility if two or more of the following factors are present:

(A) The center offers pregnancy testing or pregnancy diagnosis, or both.

(B) The center has staff or volunteers who wear medical attire or uniforms.

(C) The center contains one or more examination tables.

(D) The center contains a private or semiprivate room or area containing medical supplies or medical instruments.

(E) The center has staff or volunteers who collect health information from clients.

(F) The center is located on the same premises as a State-licensed medical facility or provider or shares facility space with a State-licensed medical provider.

(7) "Premises" means land and improvements or appurtenances or any part thereof.

§ 2493. UNFAIR AND DECEPTIVE ACT

(a) It is an unfair and deceptive act and practice in commerce and a violation of section 2453 of this title for any limited-services pregnancy center to disseminate or cause to be disseminated to the public any advertising about the services or proposed services performed at that center that is untrue or clearly designed to mislead the public about the nature of services provided. Advertising includes representations made directly to consumers; marketing practices; communication in any print medium, such as newspapers, magazines, mailers, or handouts; and any broadcast medium, such as television or radio, telephone marketing, or advertising over the Internet such as through websites and web ads. For purposes of this chapter, advertising or the provision of services by a limited-services pregnancy center is an act in commerce.

(b) Health care providers certified, registered, or licensed under Title 26 of the Vermont Statutes Annotated who are employed by, contracted to provide services for or on behalf of, or volunteer to provide services at a limited-services pregnancy center shall be responsible for conducting and providing health care services, information, and counseling at the center. The failure of a health care professional certified, registered, or licensed under Title 26 of the Vermont Statutes Annotated to conduct or to ensure that health care services,

information, and counseling at the limited-services pregnancy services center are conducted in accordance with State law and professional standards of practice may constitute unprofessional conduct under 3 V.S.A. § 129a and 26 V.S.A. § 1354.

(c) The Attorney General has the same authority to make rules, conduct civil investigations, and bring civil actions with respect to violations of subsection (a) of this section as provided under subchapter 1 of this chapter.

* * * Reports; Interstate Compacts * * *

Sec. 9. 18 V.S.A. § 9405 is amended to read:

§ 9405. STATE HEALTH IMPROVEMENT PLAN; HEALTH RESOURCE ALLOCATION PLAN

* * *

(b) *The Green Mountain Care Board, in consultation with the Secretary of Human Services or designee, shall publish on its website the Health Resource Allocation Plan identifying Vermont's critical health needs, goods, services, and resources, which shall be used to inform the Board's regulatory processes, cost containment and statewide quality of care efforts, health care payment and delivery system reform initiatives, and any allocation of health resources within the State. The Plan shall identify Vermont residents' needs for health care services, programs, and facilities; the resources available and the additional resources that would be required to realistically meet those needs and to make access to those services, programs, and facilities affordable for consumers; and the priorities for addressing those needs on a statewide basis. The Board may expand the Plan to include resources, needs, and priorities related to the social determinants of health. The Plan shall be revised periodically, but not less frequently than once every four years.*

* * *

(3) *The Board shall receive and consider public input on the Plan at a minimum of one Board meeting and one meeting of the Advisory Committee and shall give interested persons an opportunity to submit their views orally and in writing.*

(4) *The Board shall include reproductive health care services and gender-affirming health care services, as those terms are defined in 1 V.S.A. § 150, in its Plan analysis.*

(5) *As used in this section:*

(A) “Health resources” means investments into the State’s health care system, including investments in personnel, equipment, and infrastructure necessary to deliver:

* * *

Sec. 9a. AGENCY OF HUMAN SERVICES; STATE HEALTH ASSESSMENT; COMMUNITY PROFILES

The Agency of Human Services shall work with LGBTQA+ community stakeholders and health care providers during the upcoming State Health Assessment and Community Profiles community engagement processes to explore barriers to equitable access to gender-affirming health care services, as defined in 1 V.S.A. § 150.

Sec. 10. BOARD OF MEDICAL PRACTICE; OFFICE OF PROFESSIONAL REGULATION; INTERSTATE COMPACTS; REPORT

On or before November 1, 2025, the Office of Professional Regulation, in consultation with the Board of Medical Practice, shall submit a report to the House Committee on Health Care and the Senate Committee on Health and Welfare with findings and recommendations for legislative action to address any concerns regarding the State’s participation, or contemplated participation, in interstate licensure compacts as a result of the provisions of this act, including the State’s participation in the Nurse Licensure Compact pursuant to 26 V.S.A. chapter 28, subchapter 5 and the Interstate Medical Licensure Compact pursuant to 26 V.S.A. chapter 23, subchapter 3A.

Sec. 10a. 26 V.S.A. chapter 56 is amended to read:

CHAPTER 56. OUT-OF-STATE TELEHEALTH LICENSURE & REGISTRATION AND INTERSTATE COMPACTS

Subchapter 1. Out-of-State Telehealth Licensure and Registration

* * *

Subchapter 2. Interstate Compacts; Health Care Provider Compacts

§ 3071. HEALTH CARE PROVIDER COMPACTS; DIRECTION TO VERMONT REPRESENTATIVES

(a) The General Assembly finds that a state’s prohibition of or limitation on the provision of gender-affirming health care services or reproductive health care services, or both, as defined by 1 V.S.A. § 150, prohibits health care providers from following health care best practices and is a failure on the part of the state to provide health care services that are medically necessary and clinically appropriate for its residents. Therefore, it is the General Assembly’s intent to protect the ability of professionals licensed, certified, or

registered in Vermont, and professionals from other member states seeking to practice a profession in Vermont pursuant to an interstate compact or agreement, to have the benefit of compacts and agreements while at the same time engaging in, providing, or otherwise facilitating, personally or professionally, gender-affirming health care and reproductive health care services.

(b) Vermont's representative or delegate for an interstate compact or agreement related to health care shall seek an amendment or exception to the language, rules, directives, or bylaws of the compact or agreement, as necessary, so that if a licensee is disciplined by another state solely for providing or assisting in the provision of gender-affirming health care services or reproductive health care services that would be legal and meet professional standards of care if provided in Vermont, the compact or agreement does not require that Vermont take professional disciplinary action against the licensee.

* * * Emergency Contraception * * *

Sec. 11. 26 V.S.A. chapter 36, subchapter 1 is amended to read:

Subchapter 1. General Provisions

* * *

§ 2022. DEFINITIONS

As used in this chapter:

* * *

(22) "Emergency contraception" means any drug approved by the U.S. Food and Drug Administration as a contraceptive method for use after sexual intercourse, whether provided over the counter or by prescription.

§ 2023. CLINICAL PHARMACY; PRESCRIBING

* * *

(b) A pharmacist may prescribe in the following contexts:

* * *

(2) State protocol.

(A) A pharmacist may prescribe, order, or administer in a manner consistent with valid State protocols that are approved by the Commissioner of Health after consultation with the Director of Professional Regulation and the Board and the ability for public comment:

* * *

(ix) emergency prescribing of albuterol or glucagon while

contemporaneously contacting emergency services; and

(x) tests for SARS-CoV for asymptomatic individuals or related serology for individuals by entities holding a Certificate of Waiver pursuant to the Clinical Laboratory Amendments of 1988 (42 U.S.C. § 263a); and

(xi) emergency contraception.

* * *

Sec. 11a. 26 V.S.A. § 2077 is added to read:

§ 2077. EMERGENCY CONTRACEPTION; VENDING MACHINES

(a) A retail or institutional drug outlet licensed under this chapter or a postsecondary school, as defined in and subject to 16 V.S.A. § 176, may make over-the-counter emergency contraception and other nonprescription drugs or articles for the prevention of pregnancy or conception available through a vending machine or similar device.

(b) Notwithstanding any provision of subsection 2032(h) of this chapter to the contrary, the Board may adopt rules in accordance with 3 V.S.A. chapter 25 to regulate the location, operation, utilization, and oversight of the vending machines and similar devices described in subsection (a) of this section in a manner that balances consumer access with appropriate safeguards for theft prevention and safety.

* * * Higher Education; Health Care Services * * *

Sec. 12. 16 V.S.A. chapter 78 is added to read:

CHAPTER 78. ACCESS TO REPRODUCTIVE AND GENDER-AFFIRMING HEALTH CARE SERVICES

§ 2501. DEFINITIONS

As used in this chapter:

(1) “Gender-affirming health care readiness” means each institution’s preparedness to provide gender-affirming health care services to students or assist students in obtaining gender-affirming health care services, including having in place equipment, protocols, patient educational materials, informational websites, and training for staff; provided, however, that gender-affirming health care readiness may include the provision of gender-affirming health care services.

(2) “Gender-affirming health care services” has the same meaning as in 1 V.S.A. § 150.

(3) “Institution” means the University of Vermont or a college in the Vermont State College system.

(4) “Reproductive health care services” has the same meaning as in 1 V.S.A. § 150.

(5) “Reproductive health care readiness” means each institution’s preparedness to provide reproductive health care services to students or assist students in obtaining reproductive health care services, including having in place equipment, protocols, patient educational materials, informational websites, and training for staff; provided, however, that reproductive health care readiness may include the provision of reproductive health care services.

(6) “Telehealth” has the same meaning as in 26 V.S.A. § 3052.

§ 2502. GENDER-AFFIRMING HEALTH CARE AND REPRODUCTIVE HEALTH CARE READINESS; REPORTS

(a) Each institution shall report to the Agency of Human Services annually, on or before November 1, on the current status of its gender-affirming health care and reproductive health care readiness, including:

(1) whether the institution has an operational health center on campus;

(2) whether the institution employs health care providers on campus;

(3) the types of gender-affirming health care services and reproductive health care services that the institution offers to its students on campus and the supports that the institution provides to students who receive those services;

(4) the institution’s efforts to assist students with obtaining gender-affirming health care services and reproductive health care services from licensed health care professionals through telehealth;

(5) the institution’s proximity to a hospital, clinic, or other facility that provides gender-affirming health care services or reproductive health care services, or both, that are not available to students on campus;

(6) the information that the institution provides regarding facilities that offer gender-affirming health care services and reproductive health care services that are not available to students on campus, including information regarding the scope of the services that are available at each such facility; and

(7) the availability, convenience, and cost of public transportation between the institution and the closest facility that provides gender-affirming health care services or reproductive health care services, or both, and whether the institution provides transportation.

(b) On or before January 31 of each year, the Agency of Human Services shall compile the materials submitted pursuant to subsection (a) of this section and report to the House Committees on Education, on Health Care, and on Human Services and the Senate Committees on Education and on Health and

Welfare on the status of gender-affirming health care and reproductive health care readiness at Vermont's institutions.

Sec. 13. GENDER-AFFIRMING HEALTH CARE AND REPRODUCTIVE HEALTH CARE READINESS; IMPLEMENTATION

Each institution shall submit its first report on the status of its gender-affirming health care and reproductive health care readiness as required under 16 V.S.A. § 2502(a) to the Agency of Human Services on or before November 1, 2023, and the Agency shall provide its first legislative report on or before January 31, 2024.

** * * Prohibition on Disclosure of Protected Health Information * * **

Sec. 14. 18 V.S.A. § 1881 is amended to read:

§ 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION PROHIBITED

(a) As used in this section:

(1) "Business associate" has the same meaning as in 45 C.F.R. § 160.103.

(2) "Covered entity" shall have has the same meaning as in 45 C.F.R. § 160.103.

(3) "Legally protected health care activity" has the same meaning as in 1 V.S.A. § 150.

(2)(4) "Protected health information" shall have has the same meaning as in 45 C.F.R. § 160.103.

(5) "Telehealth" has the same meaning as in 26 V.S.A. § 3052.

(b) A covered entity or business associate shall not disclose protected health information unless the disclosure is permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(c) In order to protect patients and providers who engage in legally protected health care activity, a covered entity or business associate shall not disclose protected health information related to a legally protected health care activity for use in a civil or criminal action; a proceeding preliminary to a civil or criminal action; or a probate, legislative, or administrative proceeding unless the disclosure meets one or more of the following conditions:

(1) The disclosure is authorized by the patient or the patient's conservator, guardian, or other authorized legal representative.

(2) The disclosure is specifically required by federal law, Vermont law, or rules adopted by the Vermont Supreme Court.

(3) The disclosure is ordered by a court of competent jurisdiction pursuant to federal law, Vermont law, or rules adopted by the Vermont Supreme Court. An order compelling disclosure under this subdivision shall include the court's determination that good cause exists to require disclosure of the information related to legally protected health care activity.

(4) The disclosure is to be made to a person designated by the covered entity or business associate and will be used solely in the defense of the covered entity or business associate against a claim that has been made, or there is a reasonable belief will be made, against the covered entity or business associate in a civil or criminal action; a proceeding preliminary to a civil or criminal action; or a probate, legislative, or administrative proceeding.

(5) The disclosure is to Vermont's Board of Medical Practice or Office of Professional Regulation, as applicable, in connection with a bona fide investigation in Vermont of a licensed, certified, or registered health care provider or a bona fide investigation of whether an individual who is not licensed, certified, or registered to practice a health care profession in Vermont engaged in unauthorized practice in this State, whether in person or through telehealth.

(6) The disclosure is to the Vermont Department of Health or the Vermont Department of Disabilities, Aging, and Independent Living, or both, in connection with a bona fide investigation of a licensed health care facility in Vermont.

** * * Effective Dates * * **

Sec. 15. EFFECTIVE DATES

(a) This section, Sec. 1 (definitions), Sec. 2 (medical malpractice), Secs. 6 and 7 (unprofessional conduct), Sec. 8 (pregnancy services centers), Secs. 9, 9a, and 10 (reports and analyses), Sec. 11a (emergency contraception; vending machines), Secs. 12 and 13 (gender-affirming health care and reproductive health care readiness; reports), and Sec. 14 (prohibition on disclosure of protected health information) shall take effect on passage.

(b) Secs. 3 and 4 (insurance coverage) shall take effect on January 1, 2024 and shall apply to all health insurance plans issued on and after January 1, 2024 on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than January 1, 2025.

(c) Sec. 5 (state plan amendment) shall take effect on January 1, 2024, except that the Agency of Human Services shall submit its request for approval of Medicaid coverage of the services prescribed in Sec. 4 of this act, if needed, to the Centers for Medicare and Medicaid Services on or before July 1, 2023, and the Medicaid coverage shall begin on the later of the date of approval or

January 1, 2024.

(d) Sec. 10a (interstate compacts; state representatives) shall take effect on July 1, 2023.

(e) Sec. 11 (emergency contraception) shall take effect on or before September 1, 2023, on such date as the Commissioner of Health approves the State protocol.